

# HOUSE . . . . . No. 4305

---

---

## The Commonwealth of Massachusetts

---

HOUSE OF REPRESENTATIVES, July 23, 2012.

The committee on Ways and Means, to whom was referred the Bill prohibiting the sale, installation and disposal of mercury thermostats (House, No. 4204), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4305).

For the committee,

BRIAN S. DEMPSEY.

# HOUSE . . . . . No. 4305

---

## The Commonwealth of Massachusetts

\_\_\_\_\_  
In the Year Two Thousand Twelve  
\_\_\_\_\_

An Act prohibiting the sale, installation and disposal of mercury thermostats.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. The General Laws are hereby amended by inserting after section 6J of chapter  
2 21H the following section:-

3 Section 6J½ (a) Any manufacturer that has sold or distributed a mercury-added thermostat in the  
4 commonwealth shall, individually or collectively as a group with other manufacturers, establish  
5 and maintain a collection and recycling program for the proper discarding of mercury-added  
6 thermostats in accordance with the provisions of this section. Each such manufacturer shall be  
7 financially responsible for its collection and recycling program.

8 (b) For the purposes of this section, the term “thermostat vendor” shall mean a person who is in  
9 the retail or wholesale business of selling, offering for sale or distributing any brand of  
10 thermostats to others; excluding, a person who is a professional service contractor or technician,  
11 energy efficiency contractor, electrician, or plumber that performs on-site services related to the  
12 installation or maintenance of heating, ventilation or air conditioning apparatus, and who, sells,  
13 offers for sale or supplies thermostats only for installation with such on-site services.

(c) Transportation and recycling of mercury-added thermostats shall be at no cost to participating collection site locations in the commonwealth; provided, however, that a collection and recycling program may require that a manufacturer's supplied collection container be utilized for such transportation. A manufacturer may assess a one-time fee not to exceed \$25 for each manufacturer supplied collection container that is requested by a collection site participant. A manufacturer may meet the requirement to transport at no cost mercury-added thermostats from a collection site for recycling, if the manufacturer establishes a process for transportation by common carrier or contract carrier and has pre-arranged for the shipping charges to be paid to the carrier. If such carrier transportation process is established, a manufacturer may impose reasonable requirements for a participant to ready the mercury-added thermostats for shipping.

(d) No cost shall be assessed to any service contractor, plumber, electrician, land owner or other person who disposes of a mercury-added thermostat at a program collection site; except, where a collection container is located at a municipal solid waste facility or hazardous waste event in connection with other disposal services, a municipality may charge a general fee to access the facility or event.

(e) Information regarding a manufacturer's collection and recycling program shall be made available to the public on the manufacturer's internet web-site and shall include: (i) the proper disposal and recycling of mercury-added thermostats, (ii) procedures for the handling and disposal of mercury-added thermostats that leak mercury or from damage pose a risk of leaking, (iii) the identity and addresses of all participating mercury-added thermostat collection-sites in the program; and (iv) information for participating collection sites on program requirements and guidelines for the proper handling and managing of mercury-added thermostats.

(f) A manufacturer shall provide written educational materials for dissemination at collection sites for service contractors, energy efficiency contractors, plumbers, electricians, land owners or other persons regarding the proper disposal and recycling requirements for mercury-added thermostats and shall publicly advertise on the proper disposal and recycling of mercury-added products in local media such as newspapers, radio and internet.

(g) The management, disposal and recycling of mercury-added thermostats shall comply with all applicable federal and state laws and regulations.

(h) No manufacturer subject to the requirements of this section, shall sell, offer for sale or distribute a non-mercury thermostat in the commonwealth unless the manufacturer is in compliance with the applicable provisions to establish and maintain a collection and recycling program for mercury-added thermostats.

(i) A municipality or solid waste disposal facility may participate as a collection site in a manufacturer's collection and recycling program; provided, however, that a manufacturer may terminate a participating collection site for a repeated failure to follow its program requirements, subject to written approval of the department.

(j) No thermostat vendor with a physical location in the commonwealth, shall sell, offer for sale, or distribute a thermostat in this state, unless the vendor establishes a collection site and accepts mercury-added thermostats for proper disposal from its customers. In order to comply with this section, a thermostat vendor may: (i) participate as a collection site in a manufacturer's mercury-added thermostat collection and recycling program; (ii) participate as a collection site in any other mercury-added thermostat collection and recycling program recognized by the department; or (iii) establish a collection site to collect, manage and dispose of mercury-added thermostats as

hazardous waste or as otherwise approved by the department, in accordance with applicable federal and state waste laws and regulations. A manufacturer may terminate a participating thermostat vendor from its mercury-added thermostat collection and recycling program for a repeated failure to follow its program guidelines, subject to written approval by the department. Termination from a program shall not negate the requirement of a thermostat vendor to collect and properly dispose of mercury-added thermostats under this section. Each thermostat vendor shall conspicuously post a sign on the premises where thermostats are displayed and offered for sale or if there is no such display, near the location where customer sales are customarily transacted, to alert customers of the proper disposal and recycling requirements for mercury-added thermostats and the vendor at no cost will accept mercury-added thermostats for proper disposal. Templates of the signage shall be prepared by the department and posted on its public internet web-site, in a form that users may access and print.

(k) A person who is a thermostat vendor shall not be subject to the provisions of the preceding paragraph and the requirement to establish or participate as mercury thermostat collection site, if such vendor: (i) has fewer than 16 employees; (ii) sells thermostats primarily to consumers at retail who, are homeowners and are not professional service contractors or technicians, energy efficiency contractors, electricians or plumbers providing services to others related to the installation or maintenance of heating, ventilation or air conditioning apparatus, or professional construction contractors; (iii) posts conspicuous signage on the premises where thermostats are displayed and offered for sale or if there is no such display, near the location where customer sales are customarily transacted, to alert customers of the proper disposal and recycling requirements for mercury-added thermostats, and with the identity and address of the nearest collection site where such thermostats will be accepted for proper disposal. General templates of

the signage shall be prepared by the department and posted on its public internet web-site, in a form that users may access and print; and (iv) provides written notification to the local board of public health or equivalent authority, of appropriate jurisdiction where such vendor is located, not less than 20 days from the effective date of the notice, that such vendor will not accept mercury added thermostats for disposal.

(l) A thermostat vendor that does not have a physical location in the commonwealth shall not sell a thermostat in this state, unless included with the sold thermostat is a written listing of an internet web-site address or toll free telephone number where a pre-paid shipping label of an approved transporter of such item and shipping box may be obtained at no cost to send the replaced mercury-added thermostat to a prearranged collection site for proper disposal and recycling.

(m) A person who is a professional service contractor or technician, energy efficiency contractor, electrician or plumber and who provides on-site services related to the installation or maintenance of heating, ventilation or air conditioning apparatus, or a professional construction contractor or demolition contractor, shall be responsible for the proper disposal to a collection site of a mercury-added thermostat, if removed from service by such person. A mercury-added thermostat shall be required to be removed from service if: (i) the mercury-added thermostat is being replaced; (ii) any major component of such apparatus that is controlled by the mercury-added thermostat is removed or replaced; (iii) a permit is required by state law or regulation to service, repair, or replace such apparatus controlled by the mercury-added thermostat; or (iv) prior to the demolition of any portion of a building or structure where such thermostat is located, provided however, the thermostat can be accessed safely for removal. A permit issued under state law or regulation that relates to any activity under clauses (i) through (iv), inclusive, shall

104 require the removal of a mercury-added thermostat as a part of such work to be performed.  
105 Respective inspectors of buildings, inspectors of wiring and inspectors of plumbing shall enforce  
106 the required removal of mercury-added thermostats in connection with work performed under an  
107 issued permit. No charge shall be assessed to a customer by such professional person for the  
108 disposal of a mercury-added thermostat to a collection site. A professional person shall inform a  
109 prospective customer of the requirement to remove from service and dispose of mercury-added  
110 thermostats prior to entering an agreement to perform services that would make necessary such  
111 removal.

112 (n) Municipal inspectors of buildings, inspectors of wiring and inspectors of plumbing shall post  
113 a clear and conspicuous sign at the location of its public office reception desk or counter  
114 regarding the requirements under this section to removal from service and disposal properly  
115 mercury-added thermostats. Templates of the signage shall be prepared by the department and  
116 posted on its public internet web-site in a form that a user may access and print.

117 (o) No person shall re-install a mercury-added thermostat that has been disconnected or removed  
118 from service.

119 (p) No professional service contactor or technician, energy efficiency contractor, electrician,  
120 plumber, construction contractor, demolition contractor, landowner or other person, who  
121 disposes properly a mercury-added thermostat to a collection site for recycling of a thermostat  
122 vendor or municipality shall be found to have unlawfully disposed of such mercury-added  
123 product under subsection (a) of section 6I of this chapter.

124 (q) No municipal or private, solid waste hauler or operator of a solid waste facility, shall  
125 knowingly, dispose or allow to be disposed, a mercury-added thermostat as solid waste unless

the mercury has been first removed by recycling or disposed as hazardous waste. A solid waste facility may knowingly accept or collect mercury-added thermostats for proper disposal, if the device is segregated from solid waste and stored in an identified recycling container in a manner approved by the division, provided the facility participates in a manufacturer's program as a collection site or has established a collection site to collect, manage and dispose of mercury-added thermostats as hazardous waste in accordance with applicable federal and state waste laws and regulations.

(r) A local board public health board or equivalent board shall notify the department of any known violations of this section.

(s) Each manufacturer that establishes a program shall, annually by the third Wednesday in February, make a report to the department on the total number of mercury-added thermostats collected for recycling for the prior calendar year period. Such report shall be filed in a form and contain the information as prescribed by the department.

All established annual recycling goals and manufacturers' annual reports shall be posted on the department's public internet web-site.

(t) The department shall promulgate regulations related to the collection, management and recycling of mercury-added thermostats consistent with this section; and, shall adopt suitable exemptions to allow, without a required manifest, for the transportation, collection, short-term containment of limited quantities of mercury-added thermostats under this section by vendors, homeowners, or professional persons as identified in the first sentence of subsection (e); notwithstanding, the provisions of section 5 of chapter 21C. To comply with federal and state laws or regulations, or when the goal of the law is achieved, or otherwise, as needed, the

commissioner of the department shall have the authority to suspend or waive any requirement under this section of a manufacturer or thermostat vendor.

SECTION 2. On or before March 1, 2013, each such manufacturer shall submit its collection and recycling plan for mercury-added thermostats for the initial 3 year period to the department of environmental protection and, thereafter, shall submit to the department an up-dated plan at intervals as set by regulation. All plans shall be in a form and contain the information as prescribed by the department and shall comply with the provisions of this subsection and any applicable regulations. Each such plan submitted shall be subject to approval by the department. Within 60 days of receipt of a plan, the department shall review such plan and make a determination. If a plan is rejected or approved in part, the manufacturer shall, within 30 days after receipt of the determination, submit to the department a modified plan to comply with the requirements of this subsection. In the event the modified plan is not in full compliance with the requirements, the department within 30 days of its receipt shall issue to the manufacturer a notice of non-compliance that effective on August 1, 2013, the manufacturer shall be subject to the prohibition of subsection (b); until a complying plan is filed and approved by the department. Notwithstanding such approved plan, a manufacturer or collective group of manufacturers, in addition to the collection of mercury-added thermostats that it or such group, sold or distributed, may at anytime opt to collect any other mercury-added thermostat. By regulation, the department shall adopt procedures of a similar nature for the submission for approval of manufacturer plans to the department after March 1, 2013.

SECTION 3. Each such manufacturer shall establish a mercury-added thermostat collection and recycling program by August 1, 2013, in accordance with its plan as approved by the department of environmental protection. The department, after such approval, may require modification of a

171 manufacturer's plan if necessary to comply with applicable federal and state laws and  
172 regulations.

173 SECTION 4. The department of environmental protection shall establish initial annual goals for  
174 the collection and recycling of mercury-added thermostats for not less than a 5 year period.

175 Every 2 years after said date, the department shall, (i) review all such reported manufacturer  
176 collection information against the recycling goal established for such years; and if warranted,  
177 may after public hearing adjust by regulation the annual recycling goals and (ii) if necessary,  
178 after public hearing establish by regulation successive annual goals for not less than a 5 year  
179 period.

180 SECTION 5. The department of public safety and division of professional licensure shall  
181 provide periodic notification of the requirement to remove and properly dispose to a collection  
182 site, mercury-added thermostats under section 6J½ of chapter 21H to respective licensees or  
183 prospective licenses, for professional trades related to, construction and building, or the servicing  
184 of heating, ventilation or air conditioning apparatus. Such notification shall be provided with any  
185 licensing or license renewal information and as a part of the curriculum of any educational  
186 requirement for professional licensure or renewal.

187 SECTION 6. Subsections (j) and (m) of section 6J1/2 in section 1 and section 4 shall take effect  
188 September 1, 2013.